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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,448	03/24/2004	Dwayne A. Tieszen	20804.05	3355

7590 03/22/2005
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EXAMINER

GUADALUPE, YARITZA

ART UNIT PAPER NUMBER

2859

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

8

Office Action Summary	Application No. 10/807,448	Applicant(s) TIESZEN, DWAYNE A.	
	Examiner Yaritza Guadalupe McCall	Art Unit 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-7,11,12 and 15-17 is/are rejected.
- 7) ☒ Claim(s) 2,4,8-10,13,14 and 18-20 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/24/2004</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 5 - 7, 11 - 12 and 15 - 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanda (US 5,174,034) in view of Gibbs et al. (US 5,806,196).

In regards to claim 1, Swanda discloses a multi-axis installable and adjustable level, comprising a permanent attachment leaf (5, 3), a level display leaf (13); an omnidirectional level display (19) disposed upon said level display leaf; a plurality of coarse adjustment hinge lugs (15) adjustably interconnecting said permanent attachment leaf to said level display leaf; and a hinge bolt passing through said coarse adjustment hinge lugs and selectively locking said leaves immovably together (See Figure 1, column 2, lines 33 - 35).

In regards to claim 3, Swanda also discloses a multi-axis installable and adjustable level further including an infinitesimally and omnidirectionally adjustable level display mechanism (21) disposed between said level display leaf and said omnidirectional level display.

Regarding claims 5 and 15, Swanda teaches a multi-axis installable and adjustable level wherein said omnidirectional level display is a bull's eye level.

In regards to claim 11, Swanda teaches a multi-axis installable and adjustable level, comprising a permanent attachment leaf (5, 3), a level display leaf (13) extending from said permanent attachment leaf; an omnidirectional level display (19) disposed upon said level display leaf; and an infinitesimally and omnidirectionally adjustable level display mechanism disposed between said level display leaf and said omnidirectional level display.

Regarding claim 12, Swanda also teaches an multi-axis installable and adjustable level further including plurality of coarse adjustment hinge lugs (15) adjustably interconnecting each said leaf together; and a hinge bolt passing through said hinge lugs and selectively locking each said immovably together.

Swanda does not disclose the plurality of attachment holes including round fastener hole and two coarse adjustment mounting holes as stated in claims 1, 7, 11 and 17. Swanda does not disclose the particular materials used to make the level being selected from metal and plastic as stated in claims 6 and 16.

With respect to the attachment holes as stated in claims 1, 7, 11 and 17 : Gibbs et al. discloses an apparatus for vehicle alignment comprising a display leaf (22), and a permanent attachment leaf (20) having a plurality of round attachment holes (34) and coarse adjustment mounting holes comprising arcuate slots (See Figure 1) disposed upon said fastener circle and aligned for use in bolting the apparatus to the surface of the vehicle. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a plurality of attachment holes as taught by Gibbs et al. to the attachment leaf disclosed by Swanda in order to provide a secure attachment mechanism that will retain the tool in place during use.

With respect to claims 6 and 16 : Gibbs et al. discloses an apparatus formed of synthetic resin materials, which includes plastics, and also gives the option of using any other suitable material (See Column 3, lines 59 - 62). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to make the tool disclosed by Swanda out of a synthetic resin such as plastic as taught by Gibbs et al. in order to provide a durable, lightweight and inexpensive material.

3. Claims 1, 3, 5 - 7, 11 - 12 and 15 - 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs et al. (US 5,806,196) in view of Turner (US Pub. No. 2003/0066198).

In regards to claims 1 and 7, Gibbs discloses an apparatus for aligning, comprising a permanent attachment leaf (20), a level display leaf (22); a level display (56, 60) disposed upon said level display leaf (22); a plurality of coarse adjustment hinge lugs (See Column 4, lines 10 - 15) adjustably interconnecting said permanent attachment leaf to said level display leaf (See Figure 2); and a hinge bolt/pin (44) passing through said coarse adjustment hinge lugs and selectively locking said leaves immovably together, and also having a plurality of attachment holes (34) comprising round fastener holes (See Figure 1) and including arcuate slots disposed upon said attachment leaf.

With respect to claims 6 and 16, Gibbs et al. discloses an apparatus formed of synthetic resin materials, which includes plastics, and also gives the option of using any other suitable material (See Column 3, lines 59 - 62).

In regards to claims 11 and 17 , Gibbs teaches an aligning apparatus comprising a permanent attachment leaf (20), a level display leaf (22) extending from said permanent attachment leaf; a level display (56, 60) disposed upon said level display leaf, said permanent attachment leaf further including a plurality of attachment holes (34) comprising round fastener holes (See Figure 1) and including arcuate slots disposed upon said attachment leaf.

Regarding claim 12, Gibbs also teaches an apparatus further including plurality of coarse adjustment hinge lugs (See Column 4, lines 10 - 15) adjustably interconnecting each said leaf together; and a hinge bolt/pin (44) passing through said hinge lugs and selectively locking each said immovably together.

Gibbs does not disclose the omnidirectional level display as stated in claims 1, 3 and 11. Gibbs does not disclose said omnidirectional level display being a bull's eye level as stated in claims 5 and 15.

Regarding the omnidirectional level as stated in claims 1, 3, 5, 11 and 15 : Turner discloses a multi-purpose leveling device comprising a level display leaf (14) provided with an omnidirectional level display (16, 17) disposed upon said display leaf and further including an infinitesimally and omnidirectionally adjustable level display mechanism (17) disposed between said level display leaf and said omnidirectional level display, said omnidirectional level display being a bull's eye level (See line 7 of paragraph [0016]). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the level disclosed by Gibbs et al. with an omnidirectional level as taught by Turner in order to increase the range on angular adjustments.

Allowable Subject Matter

4. Claims 2, 4, 8 - 10, 13 - 14 and 18 - 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are considered of relevance to the present application :

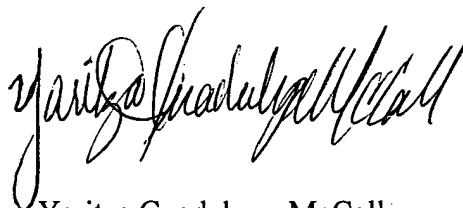
- a. Stone (US 3,820,249)
- b. Weaver (US 2,831,264)
- c. Decesare (US 5,685,083)
- d. Heinsius et al. (US 4,785,544)
- e. Hopkins (US 4,542,592)
- f. Turner (US Pub. No. 2003/0066198)
- g. Morton (US 3,916,531)
- h. Mills (US 4,739,561)
- i. Anderson (US 2,624,118)
- j. Grimes (US 5,025,568)
- k. Smith (US 2,752,692)

1. Gurley (US 312,266)

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe whose telephone number is (571)272 -2244. The examiner can normally be reached on 9:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yaritza Guadalupe-McCall
Patent Examiner
Art Unit 2859

YGM
March 21, 2005